

**REMARKS**

Claims 27-39 and 41-44 are pending.

Claims 27-39 and 41-43 are withdrawn from consideration.

Claim 44 stands rejected.

Claims 27-39 and 41-44 have been cancelled.

Claims 45-56 have been added.

Claims 45-56 are hereby submitted for review and consideration.

No new matter has been added.

Applicants have cancelled all pending claims and added new claims 45-56 to avoid any confusion, as the dependency of the claims has become convoluted.

It is noted that new claim 45 corresponds to the subject matter of now cancelled claims 44, 29 and 30. New claim 46 corresponds to now cancelled claim 27. New claim 47 corresponds to now cancelled claim 28. New claim 48 corresponds to now cancelled claim 31. New claim 49 corresponds to now cancelled claim 32. New claim 50 corresponds to now cancelled claim 33. New claim 51 corresponds to now cancelled claim 34. New claim 52 corresponds to now cancelled claim 35. New claim 53 corresponds to now cancelled claim 38. New claim 54 corresponds to now cancelled claim 39. New claim 55 corresponds to now cancelled claim 42. New claim 56 corresponds to now cancelled claim 43.

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In the Office Action, the Examiner has indicated that claims 41-43 and 27-39 have been withdrawn from consideration as being drawn to a weight loss method. Claim 44 has been examined as being drawn to a method for treating the side effects of a ketogenic diet.

Applicant has cancelled all pending claims, and has replaced claim 44 with new claim 45, also directed to a method for treating the side effects of a ketogenic diet. New dependent claims 46-56 all depend ultimately from claim 44 and are also all directed to the method for treating the side effects of a ketogenic diet. As such, Applicant respectfully requests that all claims now pending be examined on the merits.

In the second section of the Office Action, the Examiner has rejected claim 44 under the first paragraph of 35 U.S.C. § 112 for failing to comply with the enablement requirement. Applicants have amended new claim 45, based on now cancelled claim 44, to remove the language of synergistic effect, but instead now claim a method for treating side effects of a particular diet. Additionally, specific quantities of the administered elements have been included from now cancelled claims 29 and 30. In view of these changes, Applicant respectfully requests that this rejection of claim 44 not be carried over to new claim 45.

In the third section of the Office Action, the Examiner has rejected claim 44 under the second paragraph of 35 U.S.C. § 112 as being indefinite. Applicant, has amended the language from now cancelled claim 44 in new claim 45, eliminating the terms “synergistic effect” and “plurality of bodily chemicals.” In view of these changes, Applicant respectfully requests that this rejection of claim 44 not be carried over to new claim 45.

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In the fourth section of the Office Action the Examiner has rejected claim 44 under 35 U.S.C. § 103 as being unpatentable over Marquie et al. (Life Sciences, 1998; 63(1):65-67), Pentikainen et al. (Annals of Medicine, 1990;22:307-312), and Poupon et al. (Hepatology, 1993;17(4):577-582 in view of Spasmo-Canulase® Bitlab ® package insert (July 1989).

In the comments, the Examiner has stated that:

“the references do not expressly teach the method of treating the side effects of a ketogenic diet with the combination of benfluorex, metformin, and ursodesoxycholic acid. The references do not expressly teach the herein claimed amount ratio employed. The references do not expressly teach the employment of pancreatin and sodium dehydrocholate with benfluorex and metformin.

Spasmo-Canulase Bitab package insert teaches Spasmo-Canulase Bitab which contains pancreatin and sodium dehydrocholate, is useful in treating abdominal cramps associated with flatulence.

One of ordinary skill in the art would have been motivated to treat side effects of a ketogenic diet (hypercholesterimia being one of the side effects of a ketogenic diet) with the combination of benfluorex, metformin and ursodesoxycholic acid.”

The Examiner goes on to state that it would have been obvious to add the spasmocanulase (pancreatin and sodium dehydrocholate) to treat the flatulence for relieving the abdominal cramps associated with taking metformin.

Applicant disagrees with the Examiner's contentions and submits the following remarks in response.

The present invention as claimed in new independent claim 45 is directed to a method for treating persons subjected to a ketogenic diet, to reduce the concentration of cholesterol, triglycerides, glicemia, uric acid, transaminases and fibrogen. The method includes administering a composition of a plurality of agents including:

- 1) a hypocholesterolemic agent, selected from the group consisting of benfluorex,

which is present in the amount from 7% to 23% in weight of the total amount of the composition and ursodesoxycholic acid which is present in the amount from 14% to 17% in weight of the total amount of the composition;

2) a hypotriglyceride agent, benfluorex, which is present in the amount of 7% to 23% in weight of the total amount of the composition;

3) a lipasic and proteasic agent, pancreatin IX F.U., which is present in the amount from 27% to 43% in weight of the total amount of the composition;

4) a hypoglycemic agent, metformin, which is present in the amount of 36% to 41% in weight of the total amount of the composition; and

5) a hydrocholeretic agent, wherein said hydrocholeretic agent is selected from the group consisting of Na dehydrocholate which is present in the amount from 9% to 14% in weight of the total amount of the composition and ursodesoxycholic acid which is present in the amount from 14% to 17% in weight of the total amount of the composition.

As noted before, the claimed agents have been selected to treat side effects of a ketogenic diet which has synergistic effect to improve their pharmaceutical properties and, at the same time, do not to interfere with the effectiveness of one another. See Specification page 15, paragraph 1.

As noted in Example 8 on page 23 of the specification, the claimed agents are mixed into a single sealed capsule. In the Declaration dated June 16, 2003, the inventor Zohoungbogbo, stated that the administration of the composition from Example 8 to patients undergoing a ketogenic diet, such as a diet where carbohydrates have been effectively eliminated, maintained normal levels of cholesterol, triglycerides, glicemia, uric acid, transaminases and fibrinogen.

On the declaration on page 5, last paragraph, Mr. Zohoungbogbo further states:

“In fact, it is well known to the physicians that drugs available on the market are composed of at most two kinds of active ingredients. Nobody has demonstrated a surprising synergic effect of a composition as the one of my invention comprising more than two active ingredients.”

This invention provides two inventive steps over the prior art. First it combines a series of active components in such quantities to bring about an overall desired effect of reducing at least six internal body chemical factors to within normal range, even when a patient is undergoing a ketogenic diet while simultaneously not negatively interacting with one another. Secondly, as stated on page 6, paragraph of the specification, the claimed method brings an additional advantage of assisting patients who have to take a great number of drugs throughout the day, by condensing to a single composition.

As noted on page 13 of the specification, pancreatin IX F.U. is total lyophilized pancreas, used in the treatment of pancreatic insufficiency and sodium dehydrocholate is a hydrocholeretic agent which causes low-density biliary secretion.

Turning to the cited prior art, the Marquie reference, teaches the use of benfluorex to decrease glucose intolerance, hyperinsulinemia, hypertryglyceridemia, hypercholesterolemia and plasma LDL- and VLDL-cholesterol as set forth in the abstract. The Marquie reference deals only with the use of benfluorex alone in treating the researched factors, as shown in page 71, indicating that benfluorex was effective after about 3 months in reducing certain internal levels of harmful elements.

The Pentikain reference teaches the use of metformin to lower cholesterol in patients. It is noted in the second sentence of the discussion on page 311, that metformin does not, “significantly affect HDL-cholesterol and triglyceride concentrations in

combined hyperlipidemia.”

The Poupon reference teaches a study showing the cholesterol lowering effect of ursodesoxycholic acid. In the abstract, it is noted that “[n]o significant change occurred in total triglyceride or total phospholipid levels.”

The spasmo-canulase reference simply teaches the administration of multi-element compound including Na dehydrocholate and pancreatin for treating abdominal cramps, associated with flatulence.

Applicant respectfully contends that the reference do not teach the invention as claimed in the present invention.

In the first instance, as acknowledged by the Examiner, none of the references teach the exact amounts of the various components as claimed in independent claim 45. As noted above, the declaration of the inventor, has set forth that these claimed ratios of components in the administered compound are measured such that they both have the desired effects, and even when combined, do not effect one another detrimentally through unwanted interaction as is shown on the accompanying table in the declaration.

Secondly, the Examiner states that abdominal cramps and flatulence are common side effects of metformin and hence it would be obvious to combine the first three elements with the Spasmo-canulase to add the pancreatin and sodium dehydrocholate and arrive at the present invention as claimed.

However, the as noted above, the pancreatin IX F.U. and sodium hydrocholate is added not to treat flatulence or cramps, but to treat insufficient pancreas function and to induce low-density biliary secretion.

To establish a prima facie case of obviousness the Examiner must show the

following steps:

- 1) set forth the differences in the claim over the applied reference;
- 2) set forth the proposed modifications of the references which would be necessary to arrive at the claimed subject matter; and
- 3) explain why the proposed modification would be obvious.

To satisfy step (3), the Examiner must identify where the prior art provides a motivating suggestion to make the modifications proposed in step (2), *In re Jones*, 958 F.2d 347, 21 U.S.P.Q. 2d 1941 (Fed Cir. 1992). The mere fact that the prior art may be modified as suggested by the Examiner does not make the modification obvious, unless the prior arts suggests the desirability of the modification, *In re Fritch*, 922 F.2d 1260, 23 U.S.P.Q. 2d 1780 (Fed Cir. 1992).

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absents some teaching or suggestion or incentive to combine them, *In re Bond*, 910 F.2d 831, 834; 15 U.S.P.Q. 2d 1566, 1568 (Fed Cir. 1990). With respect to the pending claims in the present application, the references cited by the Examiner fail to provide any teaching or suggestion to combine pancreatin IX F.U. and sodium dehydrocholate (from spasmo-canulase) to benfluorex, metformin and ursodesoxycholic acid, in the claimed ratios as done in independent claim 45.

In the claimed invention, the various agents are combined in manner to treat the side effects of a ketogenic diet, having the results shown in the declaration, normalizing the level of a number of internal body chemicals to within their normal range. Two of the agents include pancreatin IX F.U. and sodium dehydrocholate. The overall effect of those combined agents as claimed results in a lowering of bodily chemicals other than

just cholesterol and triglycerides, such as fibrogen, elevated levels of which also result from a ketogenic diet.

As noted by the Examiner, benfluorex, metformin and ursodesoxycholic acid are each used to treat hypercholesterolemia. However, none of these references which contain teachings for using these agents, also contain a suggestion to combine them with a pancreatin or a sodium dehydrocholate agent to help further stabilize other internal body chemicals which are affected by a ketogenic diet. Rather, the Examiner simply states that one of the agents, metformin, has a side effect of cramps, and that it would be obvious to combine the spasmo-canulase to address this issue.

However, none of the references suggest such a combination. Furthermore, such a combination under those circumstances would not even be necessary should a patient not suffer from such side effects by the metformin. In such an instance of no-cramps or no-flatulence, there would be no need to combine the spasmo-canulase to the other agents. Simply because a particular side effect may be experienced in certain limited situations does not obviate the need to add both pancreatin and sodium dehydrocholate to additional hypercholesterolemic agents in every instance, such as claimed in the present invention in claim 45. Furthermore, it is noted that the spasmo-canulase reference makes no mention of its use in connection with treating side effects of a ketogenic diet nor does it mention its use in connection with any one of benfluorex, metformin, or ursodesoxycholic acid.

As such, for at least this reason, Applicant respectfully submits that the present invention as claimed in claim 45 is not taught or suggested in any one of the cited references, either alone or in combination with one another. For example, there is no



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teaching or suggestion in any one of the cited references for administering a single agent including benfluorex, metformin and ursodesoxycholic acid in combination with either one of sodium dehydrocholate or pancreatin IX F.U. Likewise, as claims 46-56 ultimately depend from independent claim 45, these claims should be allowed for the same reason set forth above.

In view of the forgoing, Applicant respectfully submits that the present invention as claimed is now in condition for allowance, the earliest possible notice of which is earnestly solicited. If the Examiner feels that a telephone interview would advance the prosecution of this application he is invited to contact the undersigned at the number listed below.

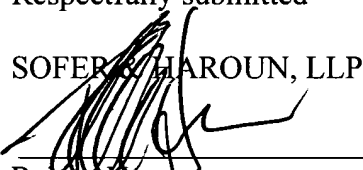
Dated:

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By:

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